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In the Supreme Court of the United States

OCTOBER TERM, 1986

JAMES W. NEWTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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TABLE OF AUTHORITIES

Page

Cases:

United States v. *Five Hundred Thousand Dollars*, 730 F.2d 1437 (11th Cir. 1984) 5, 8

United States v. *Four Million, Two Hundred Fifty-five Thousand*, 762 F.2d 895 (11th Cir. 1985), cert. denied, No. 85-675 (Jan. 13, 1986) 5

United States v. *One Ford Coupe Automobile*, 272 U.S. 321 (1926) 8

United States v. *One Hundred Twenty-Two Thousand Forty-Three Dollars ($122,043.00) in United States Currency*, 792 F.2d 1470 (9th Cir. 1986) 7

United States v. *One 1945 Douglas C-54 (DC-4) Aircraft*, 647 F.2d 864 (8th Cir. 1981), cert. denied, 454 U.S. 1143 (1982) 5, 6, 7

United States v. *1982 Sanger 24' Spectra Boat*, 738 F.2d 1043 (9th Cir. 1984) 5, 7

United States v. *Palmer*, 565 F.2d 1063 (9th Cir. 1977) 7

United States v. *Stowell*, 133 U.S. 1 (1890) 8

United States v. *$3,799.00 in United States Currency*, 684 F.2d 674 (10th Cir. 1982) 5, 8

United States v. *United States Currency in the Amount of $2,857.00*, 754 F.2d 208 (7th Cir. 1985) 8

Page

Case—Continued:

United States v. *Wright*, 610 F.2d 930 (D.C. Cir. 1979) 7

Statutes:

18 U.S.C. 545 ..... 1, 4, 6
19 U.S.C. 1603-1618 ..... 4, 5, 6
19 U.S.C. 1608 ..... 5, 6
19 U.S.C. 1618 4
21 U.S.C. 881(a) 6, 7
31 U.S.C. 5317 7

Miscellaneous:

124 Cong. Rec. 34672 (1978) 6

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Petitioner challenges the court of appeals' holding that, because he had no legal or equitable ownership interest in an illegally imported item, he had no standing to challenge its forfeiture under 18 U.S.C. 545.

1. On December 6, 1983, the United States filed a complaint in the United States District Court for the Western District of Texas seeking civil forfeiture of a religious item known as a monstrance. The complaint alleged that the monstrance was subject to forfeiture under 18 U.S.C. 545 because it had been illegally imported into this country. Petitioner and the Republic of Colombia filed claims to the monstrance. After an evidentiary hearing, the district court determined that petitioner did not have a sufficient interest in the property to afford him standing as a claimant. The district court ordered the monstrance to be forfeited to the

United States (Pet. App. 20a-44a).[1] The court of appeals affirmed (Pet. App. la-19a).

a. The monstrance—a religious artifact of gold and precious jewels worth at least $3 million (see Republic of Colombia Br. in Opp. App. 31r (photograph))—was made in the 18th century for the Convent of the Sisters of Santa Clara in Tunja, Colombia, where it remained for 200 years (Pet. App. 4a-5a). In 1978, to obtain funds to repair their convent, the nuns sold the monstrance to a Colombian on condition that the monstrance remain in Colombia (*id.* at 5a, 24a). Despite that proviso, Eduardo Uhart bought the monstrance in 1981 and brought it into this country in February 1981 (*id.* at 6a, 40a). Uhart did not obtain the required export documents from Colombia, and the Customs declarations that he filed on importation of the monstrance into the United States contained false statements concerning, inter alia, the value of the monstrance, its country of origin, its prior ownership, and the existence of a valid bill of sale. (*id.* at 6a-7a, 27a-30a).

About a month later, Uhart telephoned petitioner in San Antonio, Texas, described the monstrance, and offered to transport it to San Antonio so that petitioner could seek a buyer for it (Pet. App. 7a, 40a). Uhart brought the monstrance to San Antonio, but petitioner was not able to locate a buyer. Uhart returned to San Antonio in the summer of 1982, and in October Uhart and petitioner agreed that petitioner would act as a broker and have one year to sell the monstrance for at least $1 million. If he were successful in arranging such a sale, petitioner would receive 20 percent of the selling price. In order to secure that arrangement, petitioner agreed to pay Uhart $200,000 as a "confidence deposit" on the monstrance. If petitioner failed

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[1]Under an agreement with the United States, the Republic of Colombia did not contest the forfeiture, and the monstrance will be returned to Colombia if the forfeiture judgment of the district court is executed.

to locate a buyer after one year, petitioner would return the monstrance upon Uhart's refund of the "confidence deposit" (*id.* at 7a-8a, 40a). In December 1982 petitioner and Uhart signed an extension of the agreement, giving petitioner the "exclusive right to sell or place" the monstrance (*id.* at 8a).

In November 1982, petitioner showed the monstrance to Dr. Nancy Kelker, a curator at the San Antonio Museum of Art. After assuring her that Colombian Customs officials had approved the export of the monstrance, petitioner requested that Dr. Kelker not make any inquiries about the artifact in Colombia. Petitioner also said that the museum should not nationally advertise the monstrance. These statements aroused Dr. Kelker's suspicions and prompted her to undertake an investigation. She determined from the Customs broker who handled Uhart's importation of the monstrance that Uhart had no Colombian export documents. She also learned from a Colombian museum that the monstrance had been removed clandestinely from Colombia (Pet. App. 9a, 28a-29a). Dr. Kelker reported her findings to the United States Customs Service.

Customs agents posing as prospective buyers met with petitioner in January 1983 (Pet. App. 9a, 26a). Petitioner told the agents, as he had told Dr. Kelker, that they should not contact anyone in Colombia about the monstrance. He admitted that there were no export documents from Colombia, but he claimed that everything had been "taken care of" (*id.* at 26a-27a). He also showed the agents a packet purporting to be, but in fact different from, the Customs documents filed by Uhart (*id.* at 27a). The agents then identified themselves and seized the monstrance as evidence of Customs violations (*id.* at 9a). Uhart was indicted for making false statements in his Customs declarations at the time he imported the monstrance, but he absconded and remains a fugitive.

b. The United States instituted forfeiture proceedings against the monstrance under 18 U.S.C. 545. Petitioner filed a claim to the monstrance under 19 U.S.C. 1603-1618, the statutory provisions that apply to forfeiture proceedings against illegally imported goods. After an evidentiary hearing, the district court dismissed petitioner's claim to the monstrance on the ground that petitioner lacked standing to contest the forfeiture (Pet. App. 39a-44a). Rejecting petitioner's contention that his $200,000 "confidence deposit" was actually a down payment on his purchase of the monstrance, the court held that, although petitioner had possession and control of the monstrance at the time of the seizure, the evidence established that he had no ownership interest in the monstrance but rather was simply a broker trying to sell it for Uhart (*id.* at 41a-44a). The court subsequently found that the monstrance was properly forfeited to the United States (*id.* at 23a-38a).[2]

The court of appeals affirmed (Pet. App. 1a-19a). The court agreed with the district court's factual finding that petitioner did not have any legal ownership interest in the monstrance (*id.* at 14a-15a) and that all he had was a contingent future interest in proceeds from any sale he could arrange (*id.* at 15a, 18a). For the same reasons, the court also held that petitioner had no equitable title to the monstrance (*id.* at 17a-18a). In denying petitioner's rehearing petition, the court concluded that petitioner had been "unable to establish a facially colorable ownership interest of either a legal or equitable nature" (*id.* at 48a) and thus reaffirmed its holding that petitioner lacked standing to contest the forfeiture.

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[2]Petitioner's request to the government for remission of the monstrance, under 19 U.S.C. 1618, was subsequently denied on the ground that petitioner had "failed to establish that he has a good faith interest in the subject property" (Pet. App. 65a).

2. Petitioner contends (Pet. 5-16) that the court of appeals erred in denying him the right to contest the forfeiture. The court of appeals' fact-bound decision is correct, and it does not present a conflict with any decision of this Court or of another court of appeals. Accordingly, the case does not merit further review by this Court.

a. Petitioner first argues (Pet. 5-12) that the court of appeals erroneously denied him standing to contest the forfeiture. Under the statutes governing the forfeiture proceeding, 19 U.S.C. 1603-1618, only a person who is "claiming" the property (19 U.S.C. 1608) may participate in the proceeding, which is, after all, a contest over who should receive the property.[3] The courts of appeals have uniformly held that a "claimant" in a forfeiture proceeding must have more than a mere financial interest, such as the interest possessed by a creditor of the owner, that the property might be used to satisfy. See, *e.g.*, *United States* v. *$3,799.00 in United States Currency*, 684 F.2d 674, 678 (10th Cir. 1982); *United States* v. *Five Hundred Thousand Dollars*, 730 F.2d 1437, 1439-1440 (11th Cir. 1984). Rather, the claimant must have a property interest in the object against which the proceeding is brought. See, *e.g.*, *United States* v. *Four Million, Two Hundred Fifty-five Thousand*, 762 F.2d 895, 907 (11th Cir. 1985), cert. denied, No. 85-675 (Jan. 13, 1986); *United States* v. *1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046-1047 (9th Cir. 1984) (requiring some "specific property interest * * * in the properties"); *United States* v. *One 1945 Douglas C-54 (DC-4) Aircraft*, 647 F.2d 864, 866 (8th Cir. 1981), cert. denied, 454 U.S. 1143 (1982). At a minimum, a claimant must have "a

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[3]Petitioner's reliance on constitutional standing cases (Pet. 6-8) is misplaced. The standing question decided by the lower courts was whether petitioner was a "claimant" within the meaning of 19 U.S.C. 1603-1618.

recognizable legal or equitable interest in the property seized" (124 Cong. Rec. 34672 (1978)).[4]

Petitioner had no such interest in the monstrance, although he might well have a claim against Uhart for return of his $200,000 "confidence deposit." Both the district court and the court of appeals in this case found that the evidence affirmatively established that petitioner did not have any legal or equitable ownership interest in the monstrance. Pet. App. 15a-18a, 41a-44a, 48a. Petitioner does not challenge those holdings. In these circumstances, the courts below were correct in holding that petitioner could not legitimately be "claiming" the monstrance (19 U.S.C. 1608) and hence could not contest the forfeiture.

Contrary to petitioner's suggestion (Pet. 10-12), the ruling of the court of appeals does not create a conflict among the circuits. No court has suggested that there is a conflict in the test used to establish standing to contest forfeiture. The variety of cases dealing with the issue simply illustrates that the property interest that is required for standing "may be evidenced in a number of ways including showings of actual possession, control, title and financial stake" (*United States* v. *One 1945 Douglas C-54 (DC-4) Aircraft*, 647 F.2d at 866). The required showing has thus varied with the circumstances. None of the cases cited by petitioner finds standing in circumstances similar to those presented here.

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[4]In 1978, Congress amended 21 U.S.C. 881(a), which concerns drug-related forfeitures. The amendment was designed in part to protect certain "innocent owner[s]" against forfeitures, and the amended statute used the term "owner" to mean "any person with a recognizable legal or equitable interest in the property seized" (124 Cong. Rec. 34672 (1978) (Joint House-Senate Explanatory Statement)). Forfeiture proceedings under 21 U.S.C. 881(a) are generally subject to the provisions of 19 U.S.C. 1603-1618. Although the standing restrictions for forfeitures under 21 U.S.C. 881(a) might conceivably be more relaxed than in Customs forfeiture cases, like this one, which are brought under 18 U.S.C. 545 (see Pet. App. 16a-17a), we assume, arguendo, that the standing inquiry is the same in the two contexts. Virtually all of the cases relied on by petitioner involve forfeitures under 21 U.S.C. 881(a).

Only two of the cases cited by petitioner involved a standing issue and found that the claimant had standing. Thus, in *United States* v. *1982 Sanger 24' Spectra Boat, supra*, the Ninth Circuit, in a case under 21 U.S.C. 881(a), held simply that actual ownership is not required for standing, but that some unspecified "lesser property interest" might suffice (738 F.2d at 1046-1047). In *United States* v. *One Hundred Twenty-Two Thousand Forty-Three Dollars ($122,043.00) in United States Currency*, 792 F.2d 1470 (1986), a forfeiture case under both the drug statute (21 U.S.C. 881(a)) and a currency reporting statute (31 U.S.C. 5317), the Ninth Circuit held that a woman's possession of cash that she said belonged to her husband gave her a sufficient interest to contest the forfeiture. Without conceding the correctness of that ruling,[5] we note two important distinctions between that case and this one: First, there was no proof there that the claimant did not in fact have an ownership interest in the currency. In this case, by contrast, the evidence proved that Uhart was the owner and that petitioner had no ownership interest in the monstrance. Second, a rule recognizing standing based on possession alone might well be justified for currency even if it is not justified for other kinds of property, because "negotiable instruments [are] difficult to identify and trace" (*United States* v. *Wright*, 610 F.2d 930, 939 (D.C. Cir. 1979)) and possession of cash may be tantamount to ownership where there is no adverse claimant (*United States* v. *Palmer*, 565 F.2d 1063, 1065 (9th Cir. 1977)).

Three of the cases cited by petitioner involved denials of standing to the claimants. *United States* v. *One 1945 Douglas C-54 (DC-4) Aircraft, supra*, held that the claimant did

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[5]The government had no interest in seeking certiorari in the case because the court of appeals held the currency properly forfeited after recognizing the claimant's standing to contest the forfeiture. 792 F.2d at 1473-1478.

not have standing to contest forfeiture of an airplane actually owned by someone else, despite various formal indicia of the claimant's ownership. *United States* v. *Five Hundred Thousand Dollars*, 730 F.2d at 1439-1440, denied standing to a claimant who could show only that he had a contingent interest in seized cash. *United States* v. *$3,799.00 in United States Currency, supra*, denied standing to a currency claimant whose "only proprietary interest in the money was that it represented a gambling debt owed to him [by the owner of the currency]" (684 F.2d at 678). The other two cases petitioner cites involved no standing issue at all. *United States* v. *United States Currency in the Amount of $2,857.00*, 754 F.2d 208 (7th Cir. 1985), raised no issue concerning the substantive, as opposed to procedural, requirements for a claimant to contest a forfeiture. And this Court in *United States* v. *One Ford Coupe Automobile*, 272 U.S. 321 (1926), reached the merits of the forfeiture action without a separate discussion of standing for the simple reason that the claimant, without contradiction, asserted that he had title to the car against which the forfeiture proceeding was brought (*id.* at 323).

3. Petitioner also argues (Pet. 13-16) that the court of appeals' approval of the forfeiture of the monstrance without petitioner's participation as a claimant deprived petitioner of property without due process.[6] This argument is merely a restatement of petitioner's claim—rejected by both courts below—that he was a bona fide purchaser of the monstrance. The district court, after a full and fair hearing,

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[6]Petitioner also challenges (Pet. 14-16) the district court's reliance on the relation-back doctrine of *United States* v. *Stowell*, 133 U.S. 1 (1890). But the district court did not rely on that doctrine in dismissing petitioner from the case (Pet. App. 44a), the court of appeals did not address the correctness of the doctrine, and the issue is irrelevant in light of the district court's dismissal of petitioner's claim on standing grounds.

found that petitioner had no property interest in the monstrance, and the court of appeals affirmed that finding. Having been found to have no legal or equitable interest in the monstrance, petitioner cannot claim that he has been deprived of property without due process of law.[7]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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[7]Petitioner includes the rejection of his remission petition as a basis for his due process argument. But petitioner has never before challenged the remission decision and cannot raise such a challenge here for the first time. In any event, as the factual findings of the district court make clear, there was ample evidence to support the Attorney General's conclusion that petitioner had not shown that he had a good faith property interest in the monstrance.